

September 13, 2022



Chiquita Brooks-LaSure
Administrator
Center for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20201

Subject: CMS-1772-P: CY 2023 Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System Proposed Rule

Dear Administrator Brooks-LaSure,

On behalf of our over 5,000 members and partners including mission-driven organizations representing the entire field of aging services, 38 state associations, hundreds of businesses, consumer groups, foundations, and research centers, LeadingAge is pleased to offer the following comments in response to the CY 2023 Medicare Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System Proposed Rule's Request for Comment on Use of CMS Data to Drive Competition in Healthcare Marketplaces.

Promoting Competition and Transparency in Health Care Marketplaces

LeadingAge supports the Administration's efforts to promote competition and transparency in our nation's health care system. The recent public release of multiple years of data on mergers, acquisitions, consolidations, and changes of ownership for Medicare enrolled hospitals and nursing homes is the first step in creating a better understanding of consolidation's impact on the health care system. Researchers, state governments, and consumers will now have more tools to evaluate prices, the quality of care, and make thoughtful decisions about their personal health.

Do commenters suggest that CMS release data on any mergers, acquisitions, consolidations, and changes in ownership that have taken place for any additional types of providers beyond nursing facilities and hospitals? If so, for which types of providers?

Much like hospital and nursing home ownership, recent research has shown similar trends in merger, acquisition, consolidation, and change of ownership in both the home health and hospice sectors. **We ask CMS to make ownership data public for Medicare certified home health agencies and hospices.**

In recent years, one trend specific to home-based Medicare services has made headlines -- the purchase of home health and hospice companies by insurance plans. As reported in the 2018 the Medicare Payment Advisory Commission (MedPAC) report on private equity in Medicare, Humana, one of the largest Medicare Advantage plans in the country, acquired a majority ownership share in partnership with two private equity firms of Kindred at Home, a national hospice and home care company.¹ Since the purchase, Humana made the decision to divest their majority ownership in the company leaving the

¹ March 2018 Report to the Congress: Medicare Payment Policy. Accessed online 4/20/2022.
https://www.medpac.gov/wp-content/uploads/import_data/scrape_files/docs/default-source/reports/mar18_medpac_entirereport_sec_rev_0518.pdf.

two private equity firms holding the majority shares.² Other large insurers have followed Humana's example. In June 2022, UnitedHealth Group announced approval from shareholders to purchase LHC Group, a for-profit chain of home health and hospice providers.³ In September 2022, CVS, which owns Aetna, announced plans to purchase home-based care provider Signify Health.⁴ There is understandably interest in how these transactions will impact access to services for MA beneficiaries and the Federal Trade Commission is already reviewing the impact of the UnitedHealth Group and LHC Group transition will have on wages.⁵

Additional evidence, presented below, shows the true scope of for-profit provider growth, including through ownership changes, on the sector as well as Medicare beneficiaries.

Home Health

- Between 2018 and 2019, private equity was involved in 50% of deals in the home health industry, reaching an all-time high in 2020.⁶
- In the last two decades, the home health industry has grown tremendously however, non-profit ownership accounts for only 11% of providers and was the only ownership type that declined between 2005-2018.^{7, 8}
- Nearly half of the ten largest home health agencies, accounting for 26% of the market, were owned by private equity groups.⁹

² Humana. "Humana Announces Agreement to Divest Majority Interest in Kindred at Home Hospice and Personal Care Divisions to Clayton, Dubilier & Rice." April 21, 2022. Available at: <https://press.humana.com/news/news-details/2022/Humana-Announces-Agreement-to-Divest-Majority-Interest-in-Kindred-at-Home-Hospice-and-Personal-Care-Divisions-to-Clayton-Dubilier--Rice/default.aspx#gsc.tab=0>

³ Home Health Care News. "LHC Group Shareholders Give Go Ahead for Sale to UnitedHealth Group." June 22, 2022. Available at: <https://homehealthcarenews.com/2022/06/lhc-group-shareholders-give-go-ahead-for-sale-to-unitedhealth-group/>

⁴ Home Health Care News. "CVS To Acquire Signify Health In \$8 Billion Blockbuster." September 5, 2022. Available at: <https://homehealthcarenews.com/2022/09/cvs-to-acquire-signify-health-in-8-billion-blockbuster/>

⁵ Home Health Care News. "FTC Reportedly Looking into Home Health Wages in Review of UnitedHealth Group-LHC Group Deal." July 6, 2022. Available at: <https://homehealthcarenews.com/2022/07/ftc-reportedly-looking-into-home-health-wages-in-review-of-unitedhealth-group-lhc-group-deal/>

⁶ Scheffler, Richard M., Alexander, Laura M., Godwin, James R. Soaring Private Equity Investments in the Healthcare Sector: Consolidation Accelerated, Competition Undermined, and Patients at Risk. *American Antitrust Institute, Petris Center at the School of Public Health University of California, Berkeley*. May 2021. Available from: <https://publichealth.berkeley.edu/wp-content/uploads/2021/05/Private-Equity-I-Healthcare-Report-FINAL.pdf>

⁷ Medicare Payment Advisory Commission. Report to the Congress: Medicare payment policy [Internet]. Washington (DC): MedPAC; 2022 Mar. Chapter 8, Home Health Services; p. 243. Available from: https://www.medpac.gov/wp-content/uploads/2021/10/mar21_medpac_report_ch8_sec.pdf

⁸ Geng, Mansouri, S., Stevenson, D. G., & Grabowski, D. C. (2020). Evolution of the home health care market: The expansion and quality performance of multi-agency chains. *Health Services Research*, 55(6), 1073–1084. <https://doi.org/10.1111/1475-6773.13597>

⁹ LexisNexis. "Home Health Care Industry Targeted in Criminal Antitrust Probe." MLex Market Insight, 20 April 2020, <https://mlexmarketinsight.com/news-hub/editors-picks/area-of-expertise/antitrust/home-health-care-industry-targeted-in-criminal-antitrust-probe>

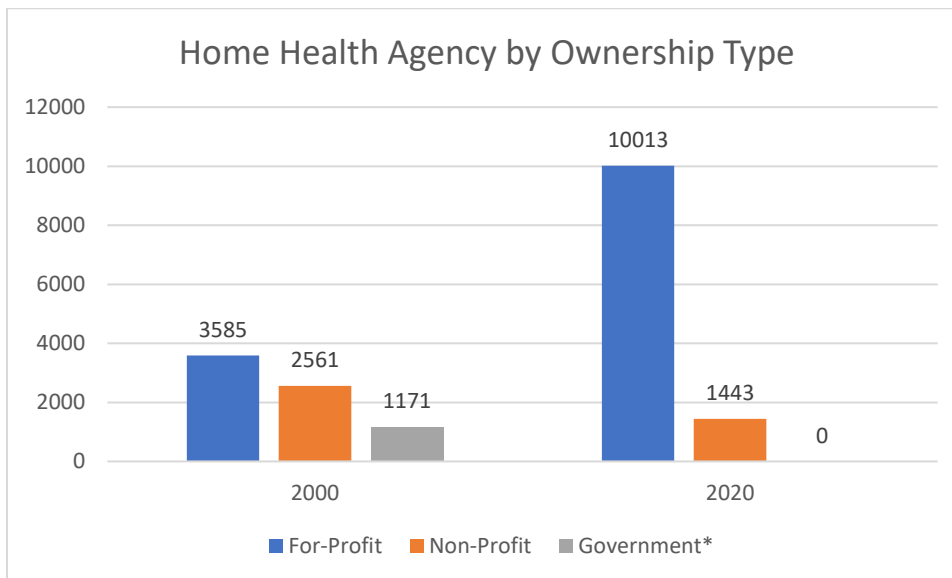
Hospice

- In the last three decades, the hospice industry has transitioned from mostly non-profit ownership to nearly two-thirds of all agencies being for-profit.^{10, 11}
- In 2012, 11% of Medicare hospice enrollees received care from for-profit hospices. By 2019, 16% Medicare hospice enrollees received care from for-profit hospices.¹²
- From 2011-2019, there were 653 for-profit transactions and acquisitions of hospice agencies.¹³

Would data for transactions occurring before the 2016 CMS revalidation effort be useful for the public or researchers, even if such data may be less complete?

For the last two decades, the ownership trends in both home health and hospice have shown an overall growth in for-profit entities. Prior to the initial round of Medicare provider revalidations which occurred in 2016, data from MedPAC and the Assistant Secretary for Planning and Evaluation (ASPE) identified these shifting ownership trends. The charts included below showcase the significant increase in proprietary agencies for both home health and hospice sectors.

Including data from before the 2016 revalidation efforts will be essential to forming a full picture of the market and how ownership changes affect the quality of care. Additionally, both home health and hospice have undergone payment changes prior to and since 2016. Having access to data prior to these payment changes will also help researchers identify the impact of payment policy changes on ownership.



¹⁰ Medicare Payment Advisory Commission. Report to the Congress: Medicare payment policy [Internet]. Washington (DC): MedPAC; 2022 Mar . Chapter 11, Hospice services; p. 299 – 320. Available from: https://www.medpac.gov/wp-content/uploads/2022/03/Mar22_MedPAC_ReportToCongress_Ch11_SEC.pdf

¹¹ Stevenson DG, Dalton JB, Grabowski DC, Huskamp HA. Nearly half of all Medicare hospice enrollees received care from agencies owned by regional or national chains. Health Aff (Millwood). 2015;34(1):30-38.

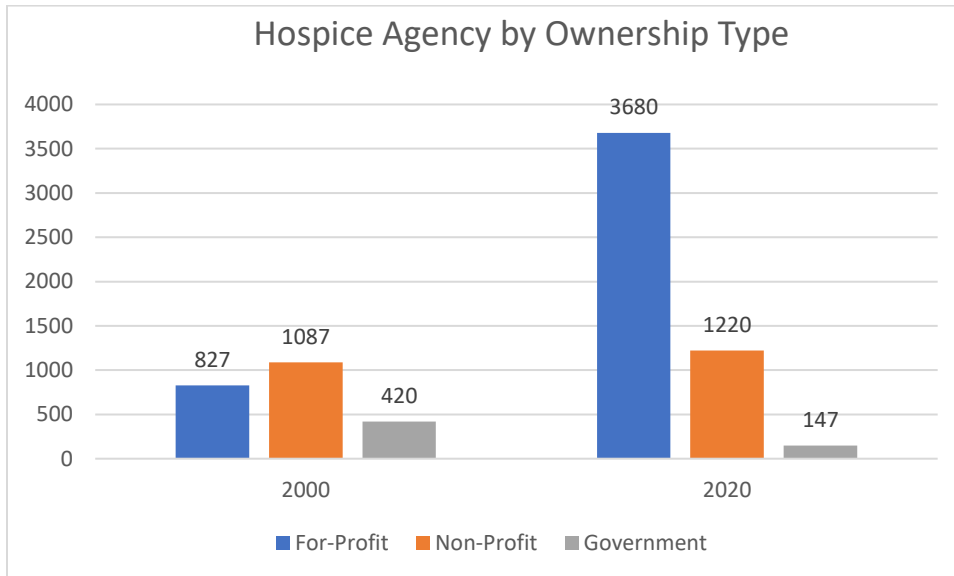
¹² Braun RT, Stevenson DG, Unruh MA. Acquisitions of Hospice Agencies by Private Equity Firms and Publicly Traded Corporations. JAMA Intern Med. 2021;181(8):1113–1114. doi:10.1001/jamainternmed.2020.6262

¹³ Ibid.

MedPAC Report to Congress: Medicare Payment Policy. Chapter 8: Home Health Care Services. March 2022.

MedPAC Report to Congress: Medicare Payment Policy. Section 3D: Home Health Services. March 2004.

*Government-owned providers operate in a different context from other providers, so their margins are not necessarily comparable



HHS/ASPE – Medicare’s Hospice Benefit: Revising the Payment System to Better Reflect Visit Intensity. ASPE Issue Brief. May 28, 2015

MedPAC Report to Congress: Medicare Payment Policy. Chapter 11: Hospice Services. March 2022.

LeadingAge members are transparent in their ownership structure and board governance and are held accountable to their local communities and government at all levels. We value these obligations of transparency and accountability because they strengthen our organizations and communities that we serve, especially when receiving taxpayer monies for the delivery of services to vulnerable older adults.

We ask CMS to make data on mergers, acquisitions, consolidations, and changes of ownership public for Medicare certified home health agencies and hospices in order to improve transparency and provide researchers with the tools to analyze the impact of ownership on the quality of care beneficiaries receive.

Sincerely,

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